

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:FIP:BR5

PLR-147251-07

Date:

November 05, 2007

LEGEND:

Authority =

City =

State =

a =

b =

Date 1 =

Date 2 =

Date 3 =

Year =

Dear :

This is in response to your request for an extension of time under §301.9100-1 of the Procedure and Administration Regulations to file Form 8328 (Carryforward Election of Unused Private Activity Bond Volume Cap) for Authority to make a carryforward election under § 146(f) of the Internal Revenue Code with respect to \$a of unused private activity bond volume cap.

Facts and Representations

You make the following factual representations. Authority is authorized to issue private activity bonds to finance qualified residential rental facilities. Authority has started a project to renovate three residential buildings, which when completed will contain b residential rental units, all of which will be occupied by low income individuals and families (the "Project").

Financing for the Project consists in part of issuing bonds, which requires an allocation of State's private activity bond volume cap. State law provides for the allocation of State volume cap under § 146 among governmental units in State, and further provides that one governmental unit may assign an allocation of private activity bond volume cap to another governmental unit, including Authority. During Date 1, City allocated \$a of its Year private activity bond volume cap (the "Year Allocation") to Authority pursuant to an assignment of allocation (the "Year Assignment"). The Year Assignment states that Authority must file Form 8328 with respect to the assigned amount if it elects to carry forward the \$a of volume cap. Authority intends to use the Year Allocation to issue bonds to finance the Project.

Authority is an infrequent issuer of private activity bonds and was not aware of its obligation to file with the Internal Revenue Service the Form 8328 to carry forward the Year Allocation. On Date 2, in the process of providing documents for the closing of the bonds, Authority discovered that Form 8328 for the Year Allocation had not been timely filed. Two days after discovering the failure to file, Authority filed with the IRS a Form 8328 electing to carry forward the \$a of Year volume cap. This ruling request was filed on Date 3, approximately one week after discovery of the failure to file the Form 8328. Authority has delayed the issuance of the bonds while it pursues this ruling request. As of Date 3, the IRS had not discovered Authority's failure to timely file the Form 8328.

Law and Analysis

Section 146(f)(1) provides that if an issuing authority's volume cap for any calendar year after 1985 exceeds the aggregate amount of tax-exempt private activity bonds issued during the calendar year (by the authority), the authority may elect to treat all (or any portion) of the excess as a carryforward for one or more carryforward purposes.

The election is made by filing Form 8328 with the Internal Revenue Service Center, Ogden, UT 84201. Under Notice 89-12, 1989-1 C.B. 633, Form 8328 must be filed by the earlier of (1) February 15 of the calendar year following the year in which the excess amount arises, or (2) the date of issue of bonds issued pursuant to the carryforward election.

The election must identify the purpose for which the carryforward is elected, and specify the amount to be carried forward for that purpose. Section 146(f)(2). Carryforward elections (and any identifications or specifications stated therein) are irrevocable. Section 146(f)(4).

Section 301.9100-1 of the Procedure and Administration Regulations provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements for automatic extensions in § 301.9100-2, must be made under the rules of § 301.9100-3. Requests for relief will be granted if the taxpayer provides evidence establishing to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides, in part, that the taxpayer is generally deemed to have acted reasonably and in good faith if the taxpayer requested relief under that section before the failure to make the regulatory election is discovered by the IRS.

Section 301.9100-3(c)(1)(i) provides, in part, that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability than the taxpayer would have had if the election had been timely (taking into account the time value of money).

Conclusion

Under the facts and circumstances of this case, we conclude that Authority acted reasonably and in good faith, and that granting an extension of time under § 301.9100-1 to file Form 8328 to carry forward \$a of unused volume cap awarded to Authority on Date 1 will not prejudice the interests of the government. Therefore, Authority is granted an extension of time to 45 days from the date of this letter ruling to file the Form 8328 to carry forward the \$a of unused volume cap.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to Authority's authorized representative.

The ruling contained in this letter is based upon information and representations submitted by Authority and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted in support of the request for a ruling, it is subject to verification upon examination.

Sincerely,

Timothy L. Jones
Senior Counsel, Branch 5
Office of Chief Counsel
Financial Institutions and Products